IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE CIVIL JURISDICTION

Writ Petition No.27l0 of l994

Sitaram Kashaba Sawant and ors.petitioners
vs
Municipal Council of Vita & ors..Respondents

Mr. Ranjit V More for petitioners

Mr Kiran Kandapile for respondent no. 3

CORAM: A.P.SHAH & D.Y.CHANDRACHUD JJ.

Dated 7.7.2005

P.C:

l. By this petition under Article 226 of the Constitution, the petitioners are seeking a declaration that the reservation of Site No.25 in Development Plant of Respondent No.l Vita Municipal Council has lapsed under section l27 of the Maharashtra Regional and Town Planning Act, l966, hereinafter referred to as "the Act". The case of the Petitioners is that Revisional S.No. 304 situated at Vita, originally belong to one Shrinivas Deshmukh. One Jayant Barve was a Mirashi tenant in this land. One Yeshu Kadam was cultivating the said land as a tenant and after his death his sons started cultivating the same. It is further case of the Petitioners that the Mirashi tenant Jayant Barve obtained possession of 4 acres

l4 gunthas out of the said land towards southern side for bonafide personal cultivation. However,he had subsequently sold the said portion of 4 acres l4 gunthas. It is further case of the Petitioners that thereafter there was compromise between Jayant Barve,the Mirashi tenant and Gopal Yesu Kadam and others and in this compromise Gopal Yesu Kadam and his brother got 3 acres 25 gunthas towards northern side while Mirashi tenant got 4 acres 22 gunthas towards southern side .

2. It is the case of the Petitioners that in or about l975 the development plan prepared by the Respondent No.l was sanctioned by the State Government and under the said development plan an area of about l2,620 sq ft towards northern side of S.No. 304 was reserved for Post and Telegraph Department as Site No.l8. In l984 the Municipal Council submitted a revised Draft Development Plan to the State Government and in this plan the reservation of the said Site No. l8 was renumbered as Site No 25 and again same was reserved for Post and Telegraph department. This reservation was however,deleted under Resolution dated 5.9.l984 by the Planning Committee of the Municipal Council. In l985, the Petitioners purchased the land

comprising Site No. 25 under separate sale deeds. The Petitioners claim that the sale deeds were executed after obtaining permission from the Sub-Divisional Officer, Walva. The revised Draft Development Plan was sanctioned by the State Government vide order dated 6.2.l986. The State Government while sanctioning the said plan made certain modifiactions in the Plan and so far as the Site No.25 was concerned the State Government reinstated the reservation for the Post and Telegraph Department.

3. It is further case of the Petitioners that the Petitioners issued purchase notices as contemplated under section l27 of the said Act on 25.8.l987 and 2.8.l987. The Petitioners contend that despite the purchase notices issued in the year l987 neither the Respondent no.l nor the Respondent no. 3 took any steps to acquire the land under reservation in Site No. 25. Therefore the reservation in Site No. 25 has lapsed. It appears that the Petitioners thereafter made representations to the authorities to release the land from the reservation,however, no response was given to the same and, therefore, the Petitioners have filed the present petition seeking declaration that the

reservation in Site No.25 has lapsed.

4. The Respondent no. 3 resisted the petition by filing affidavit of the Sr Superintendent of Post Office, Sangli Division, Sangli. It is inter alia contended by the 3rd Respondent that in l98l the Respondent no. 3 had addressed letter to the Town Planning and Valuation Department seeking information about the valuation of the land and they were informed that the value of the land will be decided by the Land Acquisition Officer in due course. It is contended that the Respondent no. 3 again requested the Town Planning Department to communicate the cost of the land and proposal for acquisition of the land was submitted to the Collector Sangli. The Collector vide letter dated 9.4.l984 asked the Respondent No. 3 to submit the required documents including certificate of Municipal Council to show that the land has been reserved for Posts and Telegraph Department in the Development Plan. It is contended that the acquisition process is in progress.

5. Mr.More, learned counsel appearing for the Petitioners submitted that the acquiring body having taken no steps for acquisition of the land

under section l26(l) of the said Act read with section 6 of the Land Acquisition Act, l894, within six months from the date of receipt of the purchase notice reservation of the land under the Development Plan has lapsed and therefore the acquiring body /planning authority has no jurisdiction to acquire the land in exercise of power under section l26 of the said Act. The learned counsel relied upon the decisions of the Supreme Court in the case of Municipal Corporation of Gr Bombay vs. Dr. Hakimwadi Tenants Association, AIR l988 SC 233 and Bhavnagar University vs Palitana Sugar Mill Pvt Ltd. AIR 2003 SC 5ll. In reply, Mr Kandapile, appearing for the respondent no.l submitted that the proposal was made to the Collector for acquisition of the land in l984. He however, fairly conceded that there is nothing to show that the acquiring body had taken any steps to comply with the requisition made by the Collector vide letter dt. 9.4.l984. He also conceded that no steps were taken by the acquiring body within 6 months after receipts of the purchase notice.

6. In our opinion there is considerable substance in the submission of Mr.More. On plain reading of

section l27 of the said Act it is manifest that if the acquiring body or the planning authority fails to take steps within six months from the date of receipt of purchase notice then the reservation lapses and the land stands released from the reservation. In Municipal Corporation of Greater Bombay vs Hakimwadi Tenants Association (supra) the Supreme Court confirmed the judgment of the learned signle Judge of this court that the period of six months specified in section l2 of the Act is to be reckoned from the date of service of notice and not from the date on which the requisite information and particulars furnished by the owner. In Bhavnagar University's case (supra) while construing the similar provisions of Gujarat Town Planning and Urban Development Act, l976 the Supreme Court held that in view of the inaction on the part of the State/ Authority to acquire the land under reservation for more than l0 years despite service of notice by the owners the land stands dereserved / de designated under section 20(2) and merely because revised Development Plan was in offing does not extend the term of l0 years and take away the right conferred upon the owner of the land . In the light of this settled legal position it is clear that the land reserved under

Site No. 25 stands dereserved on account of inaction on the part of the acquiring body/ planning authority. The Petitioners are therefore entitled to the declaration as sought for and accordingly Rule is made absolute in terms of prayer clause (a) with no order as to costs.